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May 24, 2010

BY HAND DELIVERY

**Kim Collins, Esquire
Staff Attorney
Federal Election Commission
999 E Street, NW
Washington, DC 20463**

Re: Matter Under Review 6275

Dear Ms. Collins:

We represent Mr. Joseph A. Rocalto, a party mentioned in the Complaint filed in above-referenced matter under review ("MUR").¹ There is no reason to believe, and no sustainable allegations indicating, Mr. Rocalto violated the Federal Election Campaign Act and its implementing regulations. For these reasons and as is set forth in more detail below, the Commission should, pursuant to 11 C.F.R. § 111.7(b), take no further action against Mr. Rocalto in this matter and dismiss the complaint as against him.

As an initial matter, the Complaint fails to identify any specific violation of the Federal Election Campaign Act and its implementing regulations allegedly committed by Mr. Rocalto. Second, the Complainant in this action, National Legal and Policy Center, is an advocacy organization with no direct knowledge of the allegations it has presented to the Commission. Instead the Complainant's allegations rely upon a set of newsclips it has collected and submitted to the Commission. The Complainant has no ability to verify, and has made no attempt to verify, that those news reports, or statements made therein, are in fact true and accurate statements. Indeed, it appears that Complainant has submitted inaccurate information regarding Mr. Rocalto in its rush to file this Complaint. Still, we will address each of Complainant's claims in turn²:

¹ We note that Mr. Rocalto is not identified as a Respondent in the Complaint.

² Mr. Rocalto's name is used in the Complaint only with regard to the second "Apparent Violation." Complainant presents no allegation of any sort that Mr. Rocalto had any involvement

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1) The Complainant states that "Mr. Racalto has failed to disclose a copy of the contract" pursuant to which he was compensated for campaign work. Any obligation, if any, to disclose a deferred compensation arrangement to the Federal Election Commission lies with Massa for Congress, not Mr. Racalto.

2) Citing a news article, the Complainant suggests that Mr. Racalto should not have been paid for campaign-related work because certain staffers allegedly professed to be unaware of any contract and also not to see Mr. Racalto perform campaign work. The emails attached collectively hereto as Exhibit A provide evidence that Mr. Racalto was indeed performing campaign work throughout the period November 2008 through March 2010.³ Moreover, attached hereto as Exhibit B is an email from the Massa for Congress Assistant Treasurer and Compliance Officer to a lending officer stating that the \$40,000 payment to Mr. Racalto was compensation for campaign work.

3) The Complainant implies that Mr. Racalto could not have worked for the Massa for Congress campaign because the Complainant has not found any indication that Mr. Racalto received reimbursement for "travel or other campaign-related expenditures." The Complainant seems to assume, without explanation, that in order to work for a campaign, one must incur expenses. Moreover, Mr. Racalto did in fact seek reimbursement for campaign related expenses, as late as December 3, 2009. Please see the email attached hereto as Exhibit C.

4) The Complaint states that "a review of Massa for Congress reports submitted to the FEC show no entry under Schedule D." As explained above, Mr. Racalto was not responsible for filing FEC reports.

5) Finally, the Complainant raises a question "as to whether Racalto's claimed employment violated House Rules" and states that Mr. Racalto denied in a Financial Disclosure Statement covering the period January 1, 2009 through December 31, 2009, that he had any reportable agreement with an outside entity. We respectfully point out that the FEC has no responsibility or authority to investigate alleged violations of the Rules of the House of

at all with respect to the first "Apparent Violation" regarding Massa for Congress's alleged improper purchase of a vehicle from GMAC.

³ In the event these emails become part of the public record, we have redacted individual identifying information that is not needed to illustrate Mr. Racalto's on-going work for Massa for Congress on a wide range of issues.

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Representatives. Moreover, Mr. Racialto has not filed a financial disclosure statement for the period referenced.⁴ Mr. Racialto has sought an extension of time in which to file that report.

In sum, the Commission has no basis to proceed to investigate these claims against Mr. Racialto. Massa for Congress has authority to use campaign funds for any legal purpose. Compensating an employee for services rendered represents a fundamentally legitimate use of campaign funds. Any dispute, if any, regarding how much Mr. Racialto was to be paid for these services does not present a violation of the federal campaign finance laws, and certainly does not involve a set of facts regarding which the Commission should invest its scarce investigative resources as it heads into an election season.

For the foregoing reasons, you should recommend to the Commission, pursuant to 11 C.F.R. § 111.7(b), that it dismiss this MUR as against Mr. Racialto.

Sincerely,



David E. Frulla

Attachments

⁴ In fact, the website cited by Complainant in support of this point contains only Mr. Racialto's 2009 "New Hire" report. As the website clearly points out, "[r]eports are organized by filing date. For example, a report filed in 2007 covering the 2006 year is listed as a 2007 report."